

Union Calendar No. 286

112TH CONGRESS
2^D SESSION

H. R. 3309

[Report No. 112–414]

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2011

Mr. WALDEN (for himself and Mr. KINZINGER of Illinois) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 19, 2012

Additional sponsors: Mr. BARTON of Texas, Mr. TERRY, Mr. BASS of New Hampshire, Mrs. BLACKBURN, Mr. SCALISE, Mr. LATTA, Mr. KLINE, and Mr. STEARNS

MARCH 19, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on November 2, 2011]

A BILL

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal Communica-*
 5 *tions Commission Process Reform Act of 2012”.*

6 **SEC. 2. FCC PROCESS REFORM.**

7 *(a) IN GENERAL.—Title I of the Communications Act*
 8 *of 1934 (47 U.S.C. 151 et seq.) is amended by inserting*
 9 *after section 12 the following new section:*

10 **“SEC. 13. TRANSPARENCY AND EFFICIENCY.**

11 *“(a) RULEMAKING REQUIREMENTS.—*

12 *“(1) REQUIREMENTS FOR NOTICES OF PROPOSED*
 13 *RULEMAKING.—The Commission may not issue a no-*
 14 *tice of proposed rulemaking unless the Commission*
 15 *provides for a period of not less than 30 days for the*
 16 *submission of comments and an additional period of*
 17 *not less than 30 days for the submission of reply com-*
 18 *ments on such notice and the Commission includes in*
 19 *such notice the following:*

20 *“(A) Either—*

21 *“(i) an identification of—*

22 *“(I) a notice of inquiry, a prior*
 23 *notice of proposed rulemaking, or a no-*
 24 *tice on a petition for rulemaking*
 25 *issued by the Commission during the*

1 *3-year period preceding the issuance of*
2 *the notice of proposed rulemaking con-*
3 *cerned and of which such notice is a*
4 *logical outgrowth; or*

5 *“(II) an order of a court review-*
6 *ing action by the Commission or other-*
7 *wise directing the Commission to act*
8 *that was issued by the court during the*
9 *3-year period preceding the issuance of*
10 *the notice of proposed rulemaking con-*
11 *cerned and in response to which such*
12 *notice is being issued; or*

13 *“(ii) a finding (together with a brief*
14 *statement of reasons therefor)—*

15 *“(I) that the proposed rule or the*
16 *proposed amendment of an existing*
17 *rule will not impose additional bur-*
18 *dens on industry or consumers; or*

19 *“(II) for good cause, that a notice*
20 *of inquiry is impracticable, unneces-*
21 *sary, or contrary to the public interest.*

22 *“(B) The specific language of the proposed*
23 *rule or the proposed amendment of an existing*
24 *rule.*

1 “(C) *In the case of a proposal to create a*
2 *program activity, proposed performance meas-*
3 *ures for evaluating the effectiveness of the pro-*
4 *gram activity.*

5 “(D) *In the case of a proposal to substan-*
6 *tially change a program activity—*

7 “(i) *proposed performance measures for*
8 *evaluating the effectiveness of the program*
9 *activity as proposed to be changed; or*

10 “(ii) *a proposed finding that existing*
11 *performance measures will effectively evalu-*
12 *ate the program activity as proposed to be*
13 *changed.*

14 “(2) *REQUIREMENTS FOR RULES.—Except as*
15 *provided in the 3rd sentence of section 553(b) of title*
16 *5, United States Code, the Commission may not*
17 *adopt or amend a rule unless—*

18 “(A) *the specific language of the adopted*
19 *rule or the amendment of an existing rule is a*
20 *logical outgrowth of the specific language of a*
21 *proposed rule or a proposed amendment of an*
22 *existing rule included in a notice of proposed*
23 *rulemaking, as described in subparagraph (B) of*
24 *paragraph (1);*

25 “(B) *such notice of proposed rulemaking—*

1 “(i) was issued in compliance with
2 such paragraph and during the 3-year pe-
3 riod preceding the adoption of the rule or
4 the amendment of an existing rule; and

5 “(ii) is identified in the order making
6 the adoption or amendment;

7 “(C) in the case of the adoption of a rule
8 or the amendment of an existing rule that may
9 have an economically significant impact, the
10 order contains—

11 “(i) an identification and analysis of
12 the specific market failure, actual consumer
13 harm, burden of existing regulation, or fail-
14 ure of public institutions that warrants the
15 adoption or amendment; and

16 “(ii) a reasoned determination that the
17 benefits of the adopted rule or the amend-
18 ment of an existing rule justify its costs
19 (recognizing that some benefits and costs are
20 difficult to quantify), taking into account
21 alternative forms of regulation and the need
22 to tailor regulation to impose the least bur-
23 den on society, consistent with obtaining
24 regulatory objectives;

1 “(D) in the case of the adoption of a rule
 2 or the amendment of an existing rule that creates
 3 a program activity, the order contains perform-
 4 ance measures for evaluating the effectiveness of
 5 the program activity; and

6 “(E) in the case of the adoption of a rule
 7 or the amendment of an existing rule that sub-
 8 stantially changes a program activity, the order
 9 contains—

10 “(i) performance measures for evalu-
 11 ating the effectiveness of the program activ-
 12 ity as changed; or

13 “(ii) a finding that existing perform-
 14 ance measures will effectively evaluate the
 15 program activity as changed.

16 “(3) DATA FOR PERFORMANCE MEASURES.—The
 17 Commission shall develop a performance measure or
 18 proposed performance measure required by this sub-
 19 section to rely, where possible, on data already col-
 20 lected by the Commission.

21 “(b) ADEQUATE DELIBERATION BY COMMIS-
 22 SIONERS.—The Commission shall by rule establish proce-
 23 dures for—

24 “(1) informing all Commissioners of a reason-
 25 able number of options available to the Commission

1 *for resolving a petition, complaint, application, rule-*
2 *making, or other proceeding;*

3 “(2) *ensuring that all Commissioners have ade-*
4 *quate time, prior to being required to decide a peti-*
5 *tion, complaint, application, rulemaking, or other*
6 *proceeding (including at a meeting held pursuant to*
7 *section 5(d)), to review the proposed Commission de-*
8 *cision document, including the specific language of*
9 *any proposed rule or any proposed amendment of an*
10 *existing rule; and*

11 “(3) *publishing the text of agenda items to be*
12 *voted on at an open meeting in advance of such meet-*
13 *ing so that the public has the opportunity to read the*
14 *text before a vote is taken.*

15 “(c) *NONPUBLIC COLLABORATIVE DISCUSSIONS.—*

16 “(1) *IN GENERAL.—Notwithstanding section*
17 *552b of title 5, United States Code, a bipartisan ma-*
18 *jority of Commissioners may hold a meeting that is*
19 *closed to the public to discuss official business if—*

20 “(A) *a vote or any other agency action is*
21 *not taken at such meeting;*

22 “(B) *each person present at such meeting is*
23 *a Commissioner, an employee of the Commission,*
24 *a member of a joint board established under sec-*

1 tion 410, or a person on the staff of such a joint
2 board; and

3 “(C) an attorney from the Office of General
4 Counsel of the Commission is present at such
5 meeting.

6 “(2) *DISCLOSURE OF NONPUBLIC COLLABO-*
7 *RATIVE DISCUSSIONS.*—Not later than 2 business days
8 after the conclusion of a meeting held under para-
9 graph (1), the Commission shall publish a disclosure
10 of such meeting, including—

11 “(A) a list of the persons who attended such
12 meeting; and

13 “(B) a summary of the matters discussed at
14 such meeting, except for such matters as the
15 Commission determines may be withheld under
16 section 552b(c) of title 5, United States Code.

17 “(3) *PRESERVATION OF OPEN MEETINGS RE-*
18 *QUIREMENTS FOR AGENCY ACTION.*—Nothing in this
19 subsection shall limit the applicability of section 552b
20 of title 5, United States Code, with respect to a meet-
21 ing of Commissioners other than that described in
22 paragraph (1).

23 “(d) *INITIATION OF ITEMS BY BIPARTISAN MAJOR-*
24 *ITY.*—The Commission shall by rule establish procedures for
25 allowing a bipartisan majority of Commissioners to—

1 “(1) direct Commission staff to draft an order,
2 decision, report, or action for review by the Commis-
3 sion;

4 “(2) require Commission approval of an order,
5 decision, report, or action with respect to a function
6 of the Commission delegated under section 5(c)(1);
7 and

8 “(3) place an order, decision, report, or action
9 on the agenda of an open meeting.

10 “(e) *PUBLIC REVIEW OF CERTAIN REPORTS AND EX*
11 *PARTE COMMUNICATIONS.*—

12 “(1) *IN GENERAL.*—*Except as provided in para-*
13 *graph (2), the Commission may not rely, in any*
14 *order, decision, report, or action, on—*

15 “(A) *a statistical report or report to Con-*
16 *gress, unless the Commission has published and*
17 *made such report available for comment for not*
18 *less than a 30-day period prior to the adoption*
19 *of such order, decision, report, or action; or*

20 “(B) *an ex parte communication or any fil-*
21 *ing with the Commission, unless the public has*
22 *been afforded adequate notice of and opportunity*
23 *to respond to such communication or filing, in*
24 *accordance with procedures to be established by*
25 *the Commission by rule.*

1 “(2) *EXCEPTION.*—Paragraph (1) does not apply
2 when the Commission for good cause finds (and incor-
3 porates the finding and a brief statement of reasons
4 therefor in the order, decision, report, or action) that
5 publication or availability of a report under subpara-
6 graph (A) of such paragraph or notice of and oppor-
7 tunity to respond to an *ex parte* communication
8 under subparagraph (B) of such paragraph are im-
9 practicable, unnecessary, or contrary to the public in-
10 terest.

11 “(f) *PUBLICATION OF STATUS OF CERTAIN PRO-*
12 *CEEDINGS AND ITEMS.*—The Commission shall by rule es-
13 *tablish procedures for publishing the status of all open rule-*
14 *making proceedings and all proposed orders, decisions, re-*
15 *ports, or actions on circulation for review by the Commis-*
16 *sioners, including which Commissioners have not cast a*
17 *vote on an order, decision, report, or action that has been*
18 *on circulation for more than 60 days.*

19 “(g) *DEADLINES FOR ACTION.*—The Commission shall
20 *by rule establish deadlines for any Commission order, deci-*
21 *sion, report, or action for each of the various categories of*
22 *petitions, applications, complaints, and other filings seek-*
23 *ing Commission action, including filings seeking action*
24 *through authority delegated under section 5(c)(1).*

1 “(h) *PROMPT RELEASE OF CERTAIN REPORTS AND*
2 *DECISION DOCUMENTS.*—

3 “(1) *STATISTICAL REPORTS AND REPORTS TO*
4 *CONGRESS.*—

5 “(A) *RELEASE SCHEDULE.*—*Not later than*
6 *January 15th of each year, the Commission shall*
7 *identify, catalog, and publish an anticipated re-*
8 *lease schedule for all statistical reports and re-*
9 *ports to Congress that are regularly or intermit-*
10 *tently released by the Commission and will be re-*
11 *leased during such year.*

12 “(B) *PUBLICATION DEADLINES.*—*The Com-*
13 *mission shall publish each report identified in a*
14 *schedule published under subparagraph (A) not*
15 *later than the date indicated in such schedule for*
16 *the anticipated release of such report.*

17 “(2) *DECISION DOCUMENTS.*—*The Commission*
18 *shall publish each order, decision, report, or action*
19 *not later than 7 days after the date of the adoption*
20 *of such order, decision, report, or action.*

21 “(3) *EFFECT IF DEADLINES NOT MET.*—

22 “(A) *NOTIFICATION OF CONGRESS.*—*If the*
23 *Commission fails to publish an order, decision,*
24 *report, or action by a deadline described in*
25 *paragraph (1)(B) or (2), the Commission shall,*

not later than 7 days after such deadline and every 14 days thereafter until the publication of the order, decision, report, or action, notify by letter the chairpersons and ranking members of the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such letter shall identify such order, decision, report, or action, specify the deadline, and describe the reason for the delay. The Commission shall publish such letter.

“(B) NO IMPACT ON EFFECTIVENESS.—The failure of the Commission to publish an order, decision, report, or action by a deadline described in paragraph (1)(B) or (2) shall not render such order, decision, report, or action ineffective when published.

“(i) BIENNIAL SCORECARD REPORTS.—

“(1) IN GENERAL.—For the 6-month period beginning on January 1st of each year and the 6-month period beginning on July 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsections (g), (h)(1)(B), and (h)(2).

1 “(2) *CONTENTS.*—*Each report required by para-*
2 *graph (1) shall contain detailed statistics on such*
3 *performance, including, with respect to each Bureau*
4 *of the Commission—*

5 “(A) *in the case of performance in meeting*
6 *the deadlines established under subsection (g),*
7 *with respect to each category established under*
8 *such subsection—*

9 “(i) *the number of petitions, applica-*
10 *tions, complaints, and other filings seeking*
11 *Commission action that were pending on*
12 *the last day of the period covered by such*
13 *report;*

14 “(ii) *the number of filings described in*
15 *clause (i) that were not resolved by the*
16 *deadlines established under such subsection*
17 *and the average length of time such filings*
18 *have been pending; and*

19 “(iii) *for petitions, applications, com-*
20 *plaints, and other filings seeking Commis-*
21 *sion action that were resolved during such*
22 *period, the average time between initiation*
23 *and resolution and the percentage resolved*
24 *by the deadlines established under such sub-*
25 *section;*

1 “(B) in the case of proceedings before an
2 administrative law judge—

3 “(i) the number of such proceedings
4 completed during such period; and

5 “(ii) the number of such proceedings
6 pending on the last day of such period; and

7 “(C) the number of independent studies or
8 analyses published by the Commission during
9 such period.

10 “(3) PUBLICATION AND SUBMISSION.—The Com-
11 mission shall publish and submit to the Committee on
12 Energy and Commerce of the House of Representa-
13 tives and the Committee on Commerce, Science, and
14 Transportation of the Senate each report required by
15 paragraph (1) not later than the date that is 30 days
16 after the last day of the period covered by such report.

17 “(j) TRANSACTION REVIEW STANDARDS.—

18 “(1) IN GENERAL.—The Commission shall condi-
19 tion its approval of a transfer of lines, a transfer of
20 licenses, or any other transaction under section 214,
21 309, or 310 or any other provision of this Act only
22 if—

23 “(A) the imposed condition is narrowly tai-
24 lored to remedy a harm that arises as a direct
25 result of the specific transfer or specific trans-

1 *action that this Act empowers the Commission to*
2 *review; and*

3 *“(B) the Commission could impose a simi-*
4 *lar requirement under the authority of a specific*
5 *provision of law other than a provision empow-*
6 *ering the Commission to review a transfer of*
7 *lines, a transfer of licenses, or other transaction.*

8 *“(2) EXCLUSIONS.—In reviewing a transfer of*
9 *lines, a transfer of licenses, or any other transaction*
10 *under section 214, 309, or 310 or any other provision*
11 *of this Act, the Commission may not consider a vol-*
12 *untary commitment of a party to such transfer or*
13 *transaction unless the Commission could adopt that*
14 *voluntary commitment as a condition under para-*
15 *graph (1).*

16 *“(k) ACCESS TO CERTAIN INFORMATION ON COMMIS-*
17 *SION’S WEBSITE.—The Commission shall provide direct ac-*
18 *cess from the homepage of its website to—*

19 *“(1) detailed information regarding—*

20 *“(A) the budget of the Commission for the*
21 *current fiscal year;*

22 *“(B) the appropriations for the Commission*
23 *for such fiscal year; and*

24 *“(C) the total number of full-time equiva-*
25 *lent employees of the Commission; and*

1 “(2) *the performance plan most recently made*
2 *available by the Commission under section 1115(b) of*
3 *title 31, United States Code.*

4 “(1) *FEDERAL REGISTER PUBLICATION.*—

5 “(1) *IN GENERAL.*—*In the case of any document*
6 *adopted by the Commission that the Commission is*
7 *required, under any provision of law, to publish in*
8 *the Federal Register, the Commission shall, not later*
9 *than the date described in paragraph (2), complete all*
10 *Commission actions necessary for such document to be*
11 *so published.*

12 “(2) *DATE DESCRIBED.*—*The date described in*
13 *this paragraph is the earlier of—*

14 “(A) *the day that is 45 days after the date*
15 *of the release of the document; or*

16 “(B) *the day by which such actions must be*
17 *completed to comply with any deadline under*
18 *any other provision of law.*

19 “(3) *NO EFFECT ON DEADLINES FOR PUBLICA-*
20 *TION IN OTHER FORM.*—*In the case of a deadline that*
21 *does not specify that the form of publication is publi-*
22 *cation in the Federal Register, the Commission may*
23 *comply with such deadline by publishing the docu-*
24 *ment in another form. Such other form of publication*
25 *does not relieve the Commission of any Federal Reg-*

1 *ister publication requirement applicable to such docu-*
 2 *ment, including the requirement of paragraph (1).*

3 *“(m) CONSUMER COMPLAINT DATABASE.—*

4 *“(1) IN GENERAL.—In evaluating and processing*
 5 *consumer complaints, the Commission shall present*
 6 *information about such complaints in a publicly*
 7 *available, searchable database on its website that—*

8 *“(A) facilitates easy use by consumers; and*

9 *“(B) to the extent practicable, is sortable*
 10 *and accessible by—*

11 *“(i) the date of the filing of the com-*
 12 *plaint;*

13 *“(ii) the topic of the complaint;*

14 *“(iii) the party complained of; and*

15 *“(iv) other elements that the Commis-*
 16 *sion considers in the public interest.*

17 *“(2) DUPLICATIVE COMPLAINTS.—In the case of*
 18 *multiple complaints arising from the same alleged*
 19 *misconduct, the Commission shall be required to in-*
 20 *clude only information concerning one such com-*
 21 *plaint in the database described in paragraph (1).*

22 *“(n) FORM OF PUBLICATION.—*

23 *“(1) IN GENERAL.—In complying with a re-*
 24 *quirement of this section to publish a document, the*
 25 *Commission shall publish such document on its*

1 *website, in addition to publishing such document in*
 2 *any other form that the Commission is required to use*
 3 *or is permitted to and chooses to use.*

4 “(2) *EXCEPTION.*—*The Commission shall by rule*
 5 *establish procedures for redacting documents required*
 6 *to be published by this section so that the published*
 7 *versions of such documents do not contain—*

8 “(A) *information the publication of which*
 9 *would be detrimental to national security, home-*
 10 *land security, law enforcement, or public safety;*
 11 *or*

12 “(B) *information that is proprietary or*
 13 *confidential.*

14 “(o) *DEFINITIONS.*—*In this section:*

15 “(1) *AMENDMENT.*—*The term ‘amendment’ in-*
 16 *cludes, when used with respect to an existing rule, the*
 17 *deletion of such rule.*

18 “(2) *BIPARTISAN MAJORITY.*—*The term ‘bipar-*
 19 *tisan majority’ means, when used with respect to a*
 20 *group of Commissioners, that such group—*

21 “(A) *is a group of 3 or more Commis-*
 22 *sioners; and*

23 “(B) *includes, for each political party of*
 24 *which any Commissioner is a member, at least*
 25 *1 Commissioner who is a member of such polit-*

1 ical party, and, if any Commissioner has no po-
2 litical party affiliation, at least 1 unaffiliated
3 Commissioner.

4 “(3) *ECONOMICALLY SIGNIFICANT IMPACT.*—The
5 term ‘economically significant impact’ means an ef-
6 fect on the economy of \$100,000,000 or more annually
7 or a material adverse effect on the economy, a sector
8 of the economy, productivity, competition, jobs, the
9 environment, public health or safety, or State, local,
10 or tribal governments or communities.

11 “(4) *PERFORMANCE MEASURE.*—The term ‘per-
12 formance measure’ means an objective and quantifi-
13 able outcome measure or output measure (as such
14 terms are defined in section 1115 of title 31, United
15 States Code).

16 “(5) *PROGRAM ACTIVITY.*—The term ‘program
17 activity’ has the meaning given such term in section
18 1115 of title 31, United States Code, except that such
19 term also includes any annual collection or distribu-
20 tion or related series of collections or distributions by
21 the Commission of an amount that is greater than or
22 equal to \$100,000,000.

23 “(6) *OTHER DEFINITIONS.*—The terms ‘agency
24 action’, ‘ex parte communication’, and ‘rule’ have the

meanings given such terms in section 551 of title 5, United States Code.”.

(b) *EFFECTIVE DATE AND IMPLEMENTING RULES.*—

(1) *EFFECTIVE DATE.*—

(A) *IN GENERAL.*—The requirements of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the date that is 6 months after the date of the enactment of this Act.

(B) *PRIOR NOTICES OF PROPOSED RULE-MAKING.*—If the Federal Communications Commission identifies under paragraph (2)(B)(ii) of subsection (a) of such section 13 a notice of proposed rulemaking issued prior to the date of the enactment of this Act—

(i) such notice shall be deemed to have complied with paragraph (1) of such subsection; and

(ii) if such notice did not contain the specific language of a proposed rule or a proposed amendment of an existing rule, paragraph (2)(A) of such subsection shall be satisfied if the adopted rule or the amendment of an existing rule is a logical outgrowth of such notice.

1 (C) *SCHEDULES AND REPORTS.*—*Notwith-*
 2 *standing subparagraph (A), subsections (h)(1)*
 3 *and (i) of such section shall apply with respect*
 4 *to 2013 and any year thereafter.*

5 (2) *RULES.*—*The Federal Communications Com-*
 6 *mission shall promulgate the rules necessary to carry*
 7 *out such section not later than 1 year after the date*
 8 *of the enactment of this Act.*

9 (3) *PROCEDURES FOR ADOPTING RULES.*—*Not-*
 10 *withstanding paragraph (1)(A), in promulgating*
 11 *rules to carry out such section, the Federal Commu-*
 12 *nications Commission shall comply with the require-*
 13 *ments of subsections (a) and (h)(2) of such section.*

14 **SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COM-**
 15 **PLAINTS IN QUARTERLY REPORT.**

16 *In compiling its quarterly report with respect to infor-*
 17 *mal consumer inquiries and complaints, the Federal Com-*
 18 *munications Commission may not categorize an inquiry or*
 19 *complaint with respect to section 227 of the Communica-*
 20 *tions Act of 1934 (47 U.S.C. 227) as being a wireline in-*
 21 *quiry or complaint or a wireless inquiry or complaint un-*
 22 *less the party whose conduct is the subject of the inquiry*
 23 *or complaint is a wireline carrier or a wireless carrier, re-*
 24 *spectively.*

1 **SEC. 4. EFFECT ON OTHER LAWS.**

2 *Nothing in this Act or the amendment made by this*
3 *Act shall relieve the Federal Communications Commission*
4 *from any obligations under title 5, United States Code, ex-*
5 *cept where otherwise expressly provided.*

Union Calendar No. 286

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2^D Session

H. R. 3309

[Report No. 112-414]

A BILL

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

MARCH 19, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed